

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Verizon California Inc.
(U-1002-C) Petition for Arbitration of an
Interconnection Agreement with Pac-West
Telecomm, Inc. (U5266C) Pursuant to
Section 252(b) of the Telecommunications Act of
1996.

Application 02-06-024
(Filed June 12, 2002)

FINAL ARBITRATOR'S REPORT

Summary

This is the Final Arbitrator's Report (FAR) in an arbitration conducted pursuant to 47 U.S.C. § 252(b) upon application by Verizon of California, Inc. (Verizon) to resolve issues in an interconnection agreement (ICA) that the parties were unable to resolve through negotiation. Pac-West Telecomm, Inc.'s (Pac-West) previous ICA with Verizon became effective in 1996, and the parties continue their interconnection arrangement in accordance with that agreement, although there is some dispute as to whether certain provisions are still effective.

Verizon filed its Petition for Arbitration on June 12, 2002, including all of the items specified by Rule 3.3 of our Revised Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996 (Rules).¹ Pac-West filed its Response to the Application on July 8, likewise with the inclusions required by

Rule 3.6. The Response differed from the Petition in identifying the number of unresolved issues to be arbitrated, but the parties jointly filed a “Revised Statement of Unresolved Issues” on July 11 that identified 28 issues to be arbitrated. Some of those issues settled during the course of the proceeding, and others were added or recast. The issues considered here are those that were addressed in the parties’ briefs when the matter was submitted.

The Arbitrator held an initial arbitration meeting on August 29, 2002, and established a schedule in accordance with the parties’ desires and the Commission’s available resources. Time was allotted for the parties to conclude their efforts at discovery.² The Arbitration Conference and Hearing (hearing) began October 15, and concluded on October 18 following three days of formal evidentiary presentation and informal conferences. No issues were resolved during the hearing, and the Arbitrator issued no rulings during the hearing to establish contract provisions. (*See* Rule 3.12.)

The parties filed post-hearing briefs, and the proceeding was submitted, on November 8, 2002, in accordance with the schedule established at the hearing by the parties and the Arbitrator. By written consent of the parties, the date for filing of the DAR under Rule 3.18 was later extended to January 13, 2003, and it was filed on that date. Both parties filed timely comments, and this FAR is filed in accordance with Rule 3.12.

¹ Administrative Law Judge Victor D. Ryerson was appointed as Arbitrator under Rule 3.4.

² During this period the Arbitrator was called upon to rule on a number of law and motion matters, including discovery disputes, resolution of which was necessary as a predicate to the arbitration hearing. *See, e.g.*, Administrative Law Judge’s Ruling on Law and Motion Matters, filed September 26, 2002.

Verizon's comments express disagreement with the resolution of issue numbers 1, 2, 3, 4, 5, 6, 8, 18, 23 and 28. Pac-West's comments express disagreement with issues 7, 17(a), 17(b) and 19. Any changes to the DAR are reflected by revisions incorporated in this FAR. Pac-West also appended suggested contract language to implement what it regards as the correct resolution of various issues. Verizon objects to the inclusion of this material in Pac-West's comments, and has filed a motion for the Arbitrator to strike it from the record. The Arbitrator agrees that it is inappropriate to include proposed contract provisions in parties' comments, but finds that there is no need to strike it; it is simply disregarded in this FAR. However, the Arbitrator hopes that this suggested language will be helpful to both parties as a vehicle for drafting the confirming agreement, to the extent that it reflects the resolution of disputed issues either in the FAR or through negotiation.

Parties

Verizon is an Incumbent Local Exchange Carrier (ILEC) that interconnects with Pac-West, as required by 47 U.S.C. § 251, under the terms of an ICA that became effective in 1996. The ICA that is the subject of this arbitration will be the successor to that agreement.

Pac-West is a facilities-based Competitive Local Exchange Carrier (CLEC) serving customers in California, including those within portions of Verizon's service area. Pac-West has fewer than 10,000 customers, the majority of which are small businesses. Pac-West provides basic telephone service, dial tone, telephone numbers, custom calling features, local and toll calling, and Internet access to Internet service providers (ISPs) for its customers.

Pac-West's network is comprised of its own equipment and facilities, combined with equipment and facilities such as OC-48s, DS-3s, DS-1s, local interconnection trunks (LITs), direct end-office trunks (DEOTs), and feature

group access services leased from Verizon and other competitive carriers. Pac-West's services tend to be concentrated in less urbanized areas of California, and in many of those Pac-West is the only alternative local service provider to Verizon for small businesses and ISPs.

Pac-West owns seven Alcatel 600E class 4 (tandem) switches, two in Oakland, three in Los Angeles, and two in Stockton. These switches are clustered together in order to minimize transport, operations, and other facilities costs. Pac-West claims that its switches are located in the geographic areas where its customers are concentrated, in the same way that ILECs' tandem switches are located where their customers are concentrated. All Pac-West switched traffic, including local traffic, is routed through at least one of its switches, regardless of the type of service or class of customer. The switches are connected to each other using inter-machine trunks paid for by Pac-West. There are points of physical interconnection (POIs) with Verizon, and although Pac-West does not collocate (*i.e.*, co-locate) at any Verizon central offices, Pac-West acquires transport facilities from third party carriers that often collocate at Verizon's offices.

Pac-West's switches are extended to the POIs in other LATAs served by Verizon, using facilities leased from interLATA carriers and paid for by Pac-West. Currently, Pac-West has established transport facilities to Verizon POIs at Verizon's Sanger tandem office in the Fresno LATA; the Verizon Manteca tandem office in the Stockton LATA; the Verizon Santa Barbara tandem office in the San Luis Obispo LATA; the Verizon Palm Springs tandem office in the Palm Springs LATA; and three different POIs in the Los Angeles LATA.

All of Pac-West's trunking to Verizon is via two-way trunks, which means that calls originated by either party and destined to be terminated by the other use the same trunk group. Since they entered into their initial ICA the

two carriers have established end office trunks based upon the volume of traffic exchanges between them. Thus, all trunks between the parties are established between two switches, either a Pac-West switch and a Verizon tandem switch, or a Pac-West switch and a Verizon end office.³ Pac-West has trunks connecting to nine Verizon California tandems and approximately 150 Verizon end offices associated with those tandems. Of these connections, approximately 35,000 are DEOTs and 5000 are tandem trunks.

Because of their historically different origins and vastly different sizes, the two companies have greatly differing network architectures. That of Pac-West, which relies on just seven switches in three locations, requires nearly every call between a Verizon customer and a Pac-West customer to be routed out of the Verizon customer's calling area for delivery to the Pac-West switch handling the call for termination. This is true even where the respective customers are next door to one another. The only exception is that of calls originated by Verizon customers served by an end office switch located in close proximity to one of Pac-West's switch locations. In order to eliminate this peculiarity of the two carriers' disparate network operations, Pac-West claims it would essentially have to duplicate Verizon's network facilities, an option that is prohibitively expensive because of the small size of its customer base and overall traffic volume.

³ This dynamic process indicates to the Arbitrator that Pac-West is gradually acquiring facilities as capacity is needed, and can be economically justified, by prevailing traffic levels. This is of some significance to the resolution of arbitration issues where the Arbitrator is called upon to determine whether, or to what extent, the burden of network costs should be shifted from one party to the other by the new ICA, although such determinations must also be tempered with an awareness of the intent of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (Act).

The Act

This arbitration is being conducted under Section 252(b) of the Act, 47 U.S.C. § 252(b). The Act was intended by Congress as a means to encourage competition for local services, which in the past was severely circumscribed by industry structure and regulation. It does so by essentially requiring ILECs' facilities to be made available for use by CLECs in return for compensation according to specified standards. In resolving the disputed issues in this arbitration, the Arbitrator must ensure that the resolution meets the requirements of Section 251 of the Act, including any implementing regulations of the Federal Communications Commission (FCC), adhere to pricing standards mandated by Section 252(d) of the Act, and provide a schedule for implementation of the terms and conditions by the parties to the agreement. (*Id.*)

The reason for the most vigorous disputes in this arbitration is that Pac-West believes the Act obligates Verizon to bear the cost of accommodating Pac-West's system requirements, which requires Verizon to haul Pac-West traffic longer distances to reach a Pac-West POI, on average, than it would if the traffic were entirely its own. Verizon rejects this conceptual approach, and urges the Arbitrator to adopt a more equitable sharing of this burden. To the extent that Pac-West cannot (or will not) provide its own facilities to haul traffic the additional distances dictated by its geographical reach, comparatively low traffic volume, small customer base, and paucity (as well as concentration) of switches, Verizon seeks to recover its resultant incremental costs, pursuant to the Act.⁴

⁴ Pac-West alleges that Verizon is overreaching in certain instances, accusing it of seeking compensation exceeding incremental costs.

The result is that the parties, having failed to reach a negotiated accommodation while the FCC and the courts struggle to settle basic statutory and federal constitutional issues relating to compensation standards under the Act, look to the Arbitrator to resolve these strategic questions. To a much greater degree than tactical questions, such as the actual level of Verizon's incremental cost of transporting and switching Pac-West's traffic, these are the issues presented here. Because there is no unambiguous or final solution to some of the "big ticket" issues under current law or regulation, the Arbitrator had no alternative but to resort to equitable solutions on some of these issues.

Pac-West's Motion to Dismiss

On October 3, shortly before the hearing, Pac-West filed a motion to dismiss the entire Petition for Arbitration or, in the alternative, to dismiss or summarily resolve in Pac-West's favor issues that are "related to or require a showing" that Verizon has satisfied FCC's conditions for charging rates for unbundled network elements (UNEs) in accordance with TELRIC costing principles. On October 11 Verizon filed a written response to the motion. Pac-West renewed the motion at the outset of the hearing, and the Arbitrator took it under submission.

The grounds for Pac-West's motion are that all unbundled network element (UNE) rates contained in ICAs must, as a matter of law, be based upon TELRIC costing principles, and the undisputed fact that Verizon's UNE rates are not. Verizon responds that Pac-West does not lease UNEs in California, did not object to the UNE rates during the negotiations, and did not include the institution of TELRIC-based UNE rates among the issues to be arbitrated when the parties filed the Revised Statement of Issues. Thus, argues Verizon, the Arbitrator should not consider the motion.

The parties do not dispute that the Act now requires UNE rates to be determined using costs determined in conformance with TELRIC methodology. (47 U.S.C. Section 252(d)(1); 47 CFR Section 51.503 *et seq.*). The Arbitrator therefore agrees with Pac-West that “as a matter of law, all UNE rates contained in incumbent interconnection agreements [including the one between the parties here] must be based on TELRIC costing principles, and the burden of proving that the rates comply with TELRIC falls on [Verizon].” (Motion, p. 5.) The Arbitrator also agrees that this Commission “has yet to approve a TELRIC cost study fo [sic] Verizon’s California operations or to adopt UNE rates based on approved costs.” (*Id.*) Therefore, Pac-West’s alternative motion for summary adjudication of issues is granted to this extent: Wherever the resolution of an issue will require Pac-West to purchase a UNE under the terms of the prospective ICA that is the subject of this arbitration, that UNE shall be purchased at rates required by the current ICA until this Commission has approved TELRIC-based rates for Pac-West’s purchase of UNEs from Verizon.

It is the Arbitrator’s intent that the status quo be maintained between these parties for the pricing of UNEs until a new pricing standard is effective under the law. As to all other compensation matters the motion is denied, and the Arbitrator’s determination of each issue is based upon the arguments and evidence presented by the parties in this arbitration.

Disputed Issues

The following issues, as stated by the parties in the Revised Statement of Unresolved Issues, remain in dispute and are decided by the Arbitrator as follows:

**Issue No. 1: General Inter-carrier
Compensation Provisions**

Discussion and Resolution:

The matrix furnished to the Arbitrator as part of the parties' Joint Revised Issues Matrix frames this issue exactly as stated above. Verizon's summary of its position is simply that, "The [ICA's] inter-carrier compensation provisions should be consistent with federal law." Pac-West's position summary essentially responds that, although the ICA compensation provisions should be "consistent with state and federal law," Verizon's proposed contract language does not properly implement the FCC's *ISP Remand Order*, and creates new terms that are not consistent with FCC or CPUC regulatory precepts. Each party's brief devotes extensive discussion to various disputed issues raised by their respective contract proposals, but does little to explain how these issues are joined in relation to the ICA.

The Arbitrator adopts the following principles to govern the contractual relationship of the parties prospectively in the new ICA. Pac-West's proposed "package" of provisions best reflects these principles, and is adopted by the Arbitrator to the extent consistent therewith:

- Whether or not a call is "local" depends solely upon the NPA-NXXs of the calling and called parties as established by Verizon's traditional local calling areas, and does not depend upon the routing of the call, even if it is outside the local calling area. This is consistent with the Commission's consistent manner of rating calls, is an industry wide practice, and recognizes the essential difference in the parties' respective network architectures, as discussed above. Inter-carrier compensation obligations between these two carriers must be consistent with this precept unless the underlying rule is changed. To the extent that this result varies from that in the recent GNAPs

proceeding, the difference is based upon the different GNAPs proposal, which would have obliterated the distinction between local and toll traffic by creating LATA-wide “local” calls.

- Verizon may implement the reciprocal compensation rate caps for presumptively ISP-bound traffic set forth in the FCC’s *ISP Remand Order*. This is consistent with Finding of Fact 5 and Ordering Paragraph 2 in D.01-11-067.
- When effective, the rate caps in the FCC *ISP Remand Order* govern compensation arrangements only with respect to ISPs. Inter-carrier compensation for other local traffic under the ICA will not be driven by that order. Local traffic to customers reasonably identifiable as paging carriers will not be considered ISPs in the ICA when the order is implemented, unless the order clearly and finally establishes otherwise.
- There is a preference for anticipating and resolving contingencies in the ICA, rather than leaving them to other dispute resolution processes. Pac-West’s proposed method of doing so is adopted by the Arbitrator in lieu of the alternative absence of closure that would result from Verizon’s proposal.

Issue No. 2: Interim Terms and Conditions

Discussion and Resolution:

Verizon argues that the rules governing inter-carrier compensation for Internet traffic set forth in the *ISP Remand Order* should apply to the traffic Verizon and Pac-West exchanged (1) during the period prior to this arbitration when they were renegotiating an expiring ICA, and (2) not later than the period when they were renegotiating an expired ICA. To the extent that the date is not expressly established by the ICA now in effect, the Arbitrator adopts Verizon’s position. The ICA becomes an “expiring” one when the ILEC gives notice to that effect, and the new inter-carrier compensation arrangement should thus become

effective at the inception of negotiations. The Arbitrator believes that this effectuates the FCC's intent to institute changes in intercarrier compensation as quickly as possible following its issuance of the *ISP Remand Order*.

Issue No. 3: Disparately Rated and Routed/Virtual NXX Traffic

Discussion and Resolution:

Pac-West has certain customers with endpoints that are not physically located in the local exchanges to which Pac-West has assigned those customers' NXX numbers. Many Pac-West customers are co-located at Pac-West's switch in one local exchange, but have phone numbers for one or more foreign exchanges. Pac-West claims that Verizon must pay reciprocal compensation for these calls.

As the Arbitrator has emphasized above, in recognition of the nature and relationship of these two carriers' respective network architectures, it makes almost no difference whether individual calls are disparately rated or routed, as long as the called and calling numbers are assigned to the same local calling area. Until the governing law conclusively provides otherwise, as long as a call meets the Commission's present test for being rated locally based upon the assigned NPA-NXXs, it should be considered local. This is the same result reached by this Arbitrator on similar facts in relation to PacBell's (now SBA's) proposed ICA with Pac-West. This is an equitable result in light of the testimony in the record as to how all calls are handled by these carriers and in light of the absence of evidence of the actual revenue impact this traffic has on Verizon. Indeed, as Pac-West observes, Verizon has conceded that the location of Pac-West's customers is immaterial to Verizon's transport costs, because Verizon must hand off all traffic to a Pac-West POI.

**Issue No. 4: Financial Responsibility on
Each Side of the POI**

Discussion and Resolution:

Verizon seeks to have Pac-West pay for hauling a Verizon-originated call to a POI located within the same LATA, but outside the local calling area. Verizon claims that to do otherwise would unfairly subsidize Pac-West's cost of interconnection and choice of network design at Verizon's expense. In addition to incurring higher transport costs for delivering these calls to Pac-West that Verizon would not incur if the calls were its own, Verizon contends that it loses access charges to which it would be entitled for calls that do not originate and terminate in the same local calling area. To remedy these problems Verizon argues that an "appropriate" compensation scheme is needed.

To meet this need Verizon proposes to establish a financial interconnection point (IP) that is different from the physical POI, and make Pac-West financially responsible for delivering traffic to Pac-West's "geographically relevant" IP; Pac-West would be responsible for transporting the traffic to its customer on the other side. Pac-West contends that existing FCC rules govern, and those rules prohibit the imposition of such charges on calls that are local under this Commission's definition.

Pac-West argues that the post-Act costs that Verizon would not otherwise have had to incur but for the advent of CLECs is simply a cost of competition that the Act contemplates. Pac-West points out that Verizon is developing a product of its own, Internet Protocol Routing Service (IPRS), which will offer Verizon's subscribers local access on outbound calls and would not impose or impute access charges on inbound calls. Pac-West implies that the Commission should not confer an unintended long-term competitive advantage

on Verizon by providing a short-term solution to this issue in the guise of striving for an equitable division of costs.

The fact that Verizon suffers a sort of economic double jeopardy under Pac-West's system—incurring incremental transport costs and paying reciprocal compensation for the same calls—is troubling to the Arbitrator, and may pose questions of a federal constitutional dimension that is beyond the scope of this arbitration. However, these issues will be settled in a decision to be issued by the FCC in a pending rulemaking, *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, FCC 01-032 (Rel. April 27, 2001), (the *Inter-carrier Compensation NPRM*). In the meantime, the Arbitrator is not equipped to resolve such questions in the course of this arbitration. At best the problem calls for an interim solution.

The Commission recently reviewed the applicable principles in Decision (D.) 02-06-076 in Application (A.) 01-11-045 and A.01-12-026 (collectively, the GNAPs application), another ICA arbitration matter. Without reiterating the entire rationale, under circumstances resembling those presented here the Commission decided that GNAPs, the CLEC, may not be assessed transport charges on the ILEC's side of the POI for local calls (as determined solely by the rating points), but that the originator of the call must pay access charges in the form of transport and tandem switching, if applicable, to the terminating ILEC for carrying intraLATA traffic across the ILEC's network to the called party. Finally, D.02-06-076 holds that for calls that are intraLATA in nature, *i.e.*, those beyond 16 miles, traditional access charges will apply.

In this instance, the Arbitrator finds that Pac-West's proposal more closely conforms to currently governing principles than Verizon's. Until the FCC settles the matter in the *Inter-carrier Compensation NPRM*, the current standards

must be reflected in the ICA, subject to provisions for handling intervening changes in the law. The Arbitrator therefore adopts Pac-West's proposal.

Issue No. 5: Term of the ICA

Discussion and Resolution:

Verizon proposes a two-year contract term, with provision to extend, because of the dynamic nature of the telecommunications industry. Pac-West proposes a three-year term, the industry standard. In light of the risk of conflict posed by the expiration of an ICA, we agree that a three-year term is preferable. Intervening changes to controlling legal and regulatory principles, and the advent of new products and technology, may be accommodated by including appropriate terms, such as change of law provisions, in the ICA.

Issue No. 6: Evergreen Provision

Discussion and Resolution

Verizon seeks to avoid the inclusion of an "evergreen" provision in the ICA that would potentially keep the terms of the ICA in effect indefinitely after a party has invoked its right to terminate, if renegotiation is underway. Pac-West's proposal would prevent a recurrence of circumstances that have created controversy in this arbitration concerning the effectiveness of its provisions following the conclusion of the contractual period for renegotiation.

Although both parties' proposals have merit, on balance Pac-West's approach poses less risk of controversy and potential harm to the public. The Arbitrator adopts Pac-West's solution.

Issue No. 7: Effect of Change of Law

Discussion and Resolution:

Verizon proposes a provision in the ICA that would enable it to discontinue a service or benefit under the ICA upon thirty days' notice to Pac-West in the event of a change of law that allows it to do so. Pac-West

opposes such a provision on the grounds that it would give Verizon unfettered discretion to discontinue the service without affording Pac-West an opportunity to challenge the validity of Verizon's decision.

Pac-West proposes a provision that would essentially force the parties into a potentially time-consuming negotiating posture. The Arbitrator is concerned that Pac-West could wield this provision as a club, rather than using it as a shield. Rule 6, which would require Verizon to file an advice letter in such circumstances, affords some protection to Pac-West.

The Arbitrator is persuaded that the balance tips in favor of affording Pac-West the benefit of the greater protection under its proposal. The Arbitrator therefore adopts Pac-West's proposal.

Issue No. 8: Assurance of Payment Obligations

Discussion and Resolutions:

Verizon seeks inclusion of an assurance of payment provision in the ICA, and proposes to make the provision unilateral because its own stability has been demonstrated over time. Pac-West does not object to the inclusion of such a provision, but would make it mutual rather than unilateral.

The Arbitrator will not create any presumption concerning the financial fitness or bona fides of either party to this ICA. If an assurance of payment provision is to be included in the ICA, it should be mutual.

Issue No. 16: Distance Sensitive Transport Rate

Discussion and Resolution:

Verizon contends that if the Arbitrator rejects Verizon's GRIP and VGRIP proposals for sharing transport costs to Pac-West's POIs, then at least it should not have to pay distance-sensitive rates to Pac-West for this transport. Verizon claims that limiting Pac-West to non-distance sensitive rate elements for transport would prevent Pac-West from charging Verizon excessive transport

rates when Verizon delivers its originating traffic to a distant Pac-West POI that is not on Verizon's network.

The Arbitrator agrees that Verizon's approach is more equitable than Pac-West's alternative proposal that each carrier be strictly responsible for the costs on its own side of the POI, as it attenuates some of the inequity imposed by the Act by requiring ILECs to accommodate CLECs under the single-POI approach. The Arbitrator therefore adopts Verizon's proposal.

Issue No. 17(a): Charges for Two-Way Interconnection Trunks

Discussion and Resolution:

In consideration of the Arbitrator's rejection of Verizon's GRIP and VGRIP proposal in resolving Issue No. 4, Verizon's proposal, as expressed in its brief, to assess the non-recurring cost of a two-way interconnecting trunk on Pac-West by charging Pac-West one-half of the non-recurring charges is reasonable and equitable. However, it is the Arbitrator's intention that this signifies only that Pac-West pay one-half of the non-recurring cost on Verizon's side of the POI, and the conforming contract should so reflect.

Issue No. 17(b): Tandem Trunking Limitations

Discussion and Resolution:

Verizon proposes a provision in the ICA that would limit the amount of traffic at a Verizon tandem, which would enable Verizon to avoid premature exhaust of its tandem switches. Premature tandem exhaust is a concern of the Commission, and such a provision was adopted in Verizon's recent ICA arbitration with GNAPs. Pac-West has advanced no compelling reason why it should not be adopted here. However, the Arbitrator is concerned that 10 T-1s may be too constrained, and encourages the parties to negotiate a

larger number if possible. Absent such agreement, Verizon's proposal is adopted.

Issue No. 17(c): Two-Way Interconnection
Trunk Performance Measurements

Discussion and Resolution:

Because Pac-West will be in control of when and how many two-way trunks will be ordered, Verizon should not be held contractually responsible for blocking and similar service problems on two-way trunks.⁵ The Arbitrator therefore adopts Verizon's position on this issue, subject to revision at Pac-West's option, to make clear that the section does not apply to Verizon maintenance interval deficiencies and Verizon missed installation appointments.

Issue No.18: Measurement and Billing of Traffic
Over Interconnection Trunks

Discussion and Resolution:

This issue pertains to how the parties should measure and bill traffic over interconnection trunks. Pac-West's proposal utilizes standard industry nomenclature for these measurements; Verizon's does not. The Arbitrator adopts Pac-West's proposal and expressly rejects any inconsistent portions of Verizon's proposal.

Issue No. 19: Third Party Carrier Arrangements

Discussion and Resolution:

This issue is concerned with the parties' respective obligations *vis a vis* transit traffic. The parties do not even frame this issue in the same manner. Accordingly, the Arbitrator adopts both parties' positions: once the level of traffic exchanged between Pac-West and a third-party carrier reaches the level of

⁵ This does not imply that Verizon should not be held responsible for complying with performance incentives and standards independently imposed by the Commission.

three DS-1s, Pac-West should directly interconnect with that carrier; provided, however, that in handling Pac-West's transit traffic Verizon shall comply with California Public Utilities Code Section 558.

**Issue No. 20: Financial Responsibility for Traffic
Passed Without CPN and for Which
OCN Has Not Been Otherwise Provided**

Discussion and Resolution:

Pac-West contends that Verizon should pay reciprocal compensation to Pac-West for unidentified transit traffic delivered from a third-party carrier to Pac-West; Verizon rejects this contention. The Arbitrator finds that the parties' rights and responsibilities are the same as those he recently adopted for the ICA between SBA and Pac-West: Verizon should have no responsibility to pay reciprocal compensation owed by the third party for such traffic, but has the obligation to exert its best efforts on Pac-West's behalf to provide the necessary information so that Pac-West can collect the reciprocal compensation from the third party.

Issue No. 23: Access to UNEs

Discussion and Resolution:

The parties appear not to have joined this issue, perhaps because they misunderstand each other's position. Verizon is not attempting to restrict Pac-West's access to UNEs through collocation, and there is no dispute that Pac-West should pay for interconnection facilities at UNE rates. The parties should adopt conforming language to merge and harmonize their positions on this issue.

**Issue No. 24: Charges Associated With Verizon
Visits to Pac-West Customer Premises**

Discussion and Resolution:

Verizon proposes that Pac-West bear the cost of trips Verizon technicians make to a Pac-West customer's premises, where Verizon has confirmed that Pac-West's local service request requires a technician visit, and the work is not completed due to the actions of the customer. Pac-West proposes that Verizon technicians be dispatched to Pac-West customer locations only upon confirmation from Pac-West; that if, upon arrival, the customer is absent, Verizon contact Pac-West and allow a reasonable period of time, *e.g.*, 20 minutes, for Pac-West to locate the customer; and that if Verizon fails to meet its due date for installation, Verizon waive installation charges for the service.

Verizon's proposal is simpler and more rational than Pac-West's, and the Arbitrator adopts it for that reason. If the parties' previous experience indicates that Verizon has abused the need for service requests or failed to keep its appointments with customers, the parties should add reasonable (and rationally related) provisions to impose appropriate economic sanctions.

Issue No. 28: Pac-West Charges to Verizon

Discussion and Resolution:

Verizon's proposal specifies that Pac-West will charge Verizon no more than Verizon charges Pac-West for comparable services, unless Pac-West demonstrates to Verizon that its costs exceed Verizon's costs for those comparable services. Pac-West's proposal would require reciprocal compensation to be "symmetrical": tariffed services should be based on the tariffed rates approved by the Commission.

The Commission has approved both carriers' rates for services. These Commission-approved tariffs apparently extend to the services at issue

here. Despite Verizon's lengthy argument to the contrary, on the basis of these facts there is no possibility that the symmetrical application of tariffs which have been reviewed and approved by the Commission will result in overreaching by Pac-West. The Arbitrator therefore adopts Pac-West's proposal.

Conclusion

The Final Arbitrator's Report on the resolution of each disputed issue is set forth above.

Dated February 10, 2003, at San Francisco California.

/s/ VICTOR D. RYERSON

Victor D. Ryerson, Arbitrator
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Final Arbitrator's Report on all parties of record in this proceeding or their attorneys of record.

Dated February 10, 2003, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

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